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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/206,329	12/08/1998	GENG ZHANG	970663.ORI	5359

7590 01/25/2002

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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 01/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/206,329	ZHANG ET AL.
	Examiner	Art Unit
	George R Evanisko	3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 27 December 2001.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-36 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-36 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Prosecution Application***

The request filed on 12/27/01 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/206329 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 6, 11, 15, 19-22, 24, 29, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Haefner et al (5690683). Haefner meets the limitations of the term "reduced capacitance".

Claims 5, 7-10, 12-14, 16-18, 23, 25-28, 30-32, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haefner et al.

Haefner et al disclose the claimed invention except for the different particular combinations of unipolar or bipolar sensing between atrial electrodes (tip and/or ring), ventricular electrodes (tip and/or ring), and case/can electrodes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable electrical therapy device using unipolar and bipolar sensing as taught by Haefner with different combinations of unipolar or bipolar sensing between atrial electrodes (tip and/or ring), ventricular electrodes (tip and/or ring), and case/can electrodes since it was known in the art that unipolar or bipolar sensing between atrial electrodes, ventricular electrodes, and case/can electrodes is used in pacemakers, defibrillators, and ICD's to sense heart activity and that particular configurations are chosen depending on the implantation of the leads and the sensing of the particular heart condition(s).

Claims 1, 2, 16-20, and 34-36 are rejected under 35 U.S.C. 103(a) as being obvious over Zhu et al, 5843136 (or Zhu et al., 6044296).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37

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CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Zhu (or Zhu) discloses the claimed invention except for the sensing system having multiple independent blanking switches corresponding to independent electrodes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cardiac sensing system as taught by Zhu (or Zhu), with the multiple independent blanking switches corresponding to independent electrodes since it was known in the art that cardiac sensing systems include multiple independent blanking switches corresponding to independent electrodes to allow the system to selectively sense and/or blank signals from different electrodes in the heart.

Claims 3-15 and 21-33 are rejected under 35 U.S.C. 103(a) as being obvious over either Zhu et al.

Zhu et al disclose the claimed invention except for the different particular combinations of unipolar or bipolar sensing between atrial electrodes (tip and/or ring), ventricular electrodes (tip and/or ring), and case/can electrodes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable electrical therapy device using unipolar and bipolar sensing as taught by Zhu et al with different combinations of unipolar or bipolar sensing between atrial electrodes (tip and/or ring), ventricular electrodes (tip and/or ring), and case/can electrodes since it was known in the art that unipolar or bipolar sensing between atrial electrodes, ventricular electrodes, and case/can electrodes is used in pacemakers, defibrillators, and ICD's to sense heart activity and that particular configurations are chosen depending on the implantation of the leads and the sensing of the particular heart condition(s).

***Response to Arguments***

Applicant's remarks filed 10/3101 have been fully considered but they are not persuasive.

The arguments that Haefner et al do not meet a reduced capacitance of less than 5 microfarads is not persuasive. Haefner's capacitance is below 5 uF, either alone, through either capacitor, or when the capacitors are combined together (approximately 0.0167 microfarads) and therefore meets the claimed limitations. A terminal disclaimer can only overcome a double patenting rejection and has not overcome the 103 rejections to Zhu et al.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703 306-4520 for regular communications and 703 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.

George R Evanisko  
Primary Examiner  
Art Unit 3762

1/16/2

GRE  
January 16, 2002